

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 5, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 96-3448

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE MARRIAGE OF:

KAREN M. KEIP, N/K/A KAREN M. SCHROEDER,

PETITIONER-RESPONDENT,

v.

DUANE A. KEIP,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Portage County:
FREDERIC W. FLEISHAUER, Judge. *Affirmed.*

Before Eich, C.J., Vergeront and Deininger, JJ.

PER CURIAM. Duane Keip appeals from the trial court's order modifying a child support award. The issue is whether the trial court properly set the child support award at 25% of Keip's income but no less than \$400 per month. We affirm.

Karen Schroeder and Duane Keip were divorced in 1992. Keip was ordered to pay 25% of his income as child support. In June 1996, Schroeder brought a motion to revise child support because she had not been receiving any payments from Keip, who had been laid off and had begun a farming operation. After a hearing, the trial court concluded that Keip was “flirting with shirking” but decided not to order him to seek full-time employment because he had developed a “somewhat reasonable plan” to earn income from his farm. He had, however, been developing this new business “on the backs of his children for over a year,” said the court. It set child support at 25% of Keip’s net farm income plus depreciation and at 25% of gross income derived from any other source, but no less than \$400 per month.

A trial court’s decision to modify child support after divorce is discretionary and will not be overturned absent an erroneous exercise of discretion. *Smith v. Smith*, 177 Wis.2d 128, 133, 501 N.W.2d 850, 852 (Ct. App. 1993). “Discretion is properly exercised where the trial court’s decision reflects a rational reasoning process based on the application of the correct legal standards to the facts.” *Id.*

We conclude that the trial court properly exercised its discretion in setting the child support order in an alternative fashion, because the payor is self-employed or has a variable month-to-month income. An award of \$400 per month, at a minimum, ensures support for the children regardless of fluctuations in Keip’s farming business. This amount is well within Keip’s projected farm earnings for 1997. The trial court was not required to find that Keip was shirking to enter this order. *See* § 767.25(1m)(hs), STATS. (trial court may consider the earning capacity of each parent in setting child support).

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

